1947.

File No. Tenancy II/47

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Legal DEPARTMENT

B BRANCH

Subject:— Rules and notifications under the Bombay Tenancy Act, 1939

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C O N T E N T S.

Legal Department File No. Tenancy II/47.

G.No.	Compilation No.	Subject	pages.
		The Bombay Tenancy Act,1939.	
1.	U.R. to R.D.No.39 dated 2.1.47	Rule 3 - Amendment of -	1 - 2
2.	U.R.to R.D.No.72 dated 20.1.47	Scrutiny of a Pamphlet to be issued by R.D. ———	3 - 4
3.	U.R. to R.D.No.4168 dated 24.4.47	Sec 27- Notification under -	5 - 8
4.	G.R.R.D. No.3451/45 dated 9.5.47	Amendment of Rule 7 ———	9 - 10 not typed
5.	U.R.to R.D.No.5088 dated 6-8-47	Secs. 20,21 and 24 - Discussion on the Amendments suggested by one Mr. Dalal.	11 - 12
6.	G.R.R.D.No.3477/45-II(b),dtd.26.9.47	Certain directions regarding the administration of the Act -	13 - 16 not typed
7.	U.R. to R.D. No.11110 dated 21.11.47	Passing on the benefit of the special remission to the tenant who is the actual cultivator - opinion regarding -	17 - 22 ~~not typed~~
8.	G.C.R.D.No.5639/45 dated 19.11.47	Delegation of Powers under -	23 - 24. not typed

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Office of the B.I.A.

Secretary, R.D's note dated 27th December 1946 at page 76:- The insertion of the words "produce or" before the words "rental share" in line 6, and of the word "determining" before the words "the crop-share" in line 8, of rule 3 (1) of the Bombay Tenancy Rules, 1946, at page 67 is not open to any objection. These amendments may be accepted.

As regards the insertion of the words "or the rental share", after the words "actual produce" in line 3 of the said rule 3, it will not be covered by section 27 (2) (a) of the Bombay Tenancy Act, 1939, which authorises the Provincial Government to make rules for the manner in which the crop-share payable to a landlord as rent may be appraised; and no rule can be made thereunder concerning the rental share.'

Incidentally, it is suggested that as the proposed Bombay Tenancy Rules, 1946, at page 67 will be finally published in 1947, in rule 1 for the figures "1946" the figures "1947" should be substituted, at the time of the final publication of the said rules.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.O. to R.D. No.39, dated the 2nd January 1947.

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The pamphlet at pages 3-12 ante as amended is in order.

2. Para IV(7) on page 8 :- Under section 19 tenants are not entitled to the produce and wood of all trees but only of such trees as are planted by them.

3. Para IV(8) on page 8:- The tenant cannot avoid termination of tenancy for non-payment of rent, if he has failed to pay rent for any three years vide proviso to section 20.

4. Para IV(11):- Not only annual tenancies but all tenancies for less than ten years have been abolished under section 23.

5. Para VI.- Item (4) on page 9A is not correct. It is not that ordinarily tenants should pay to the landlord not more than the maximum rent but in any case they are not to pay more than that.

6. Para VI(d) General.- The statement at 'A' on page 10 that the rent will be calculated in relation to the total produce of all crops on land during any cultivating season is not correct. H.E. has stated on other papers that 1/3 will be in relation to the crop or crops to which half or the other previous share related, for example, if the share taken so far was in respect of the main crop only, 1/3 should be of the main crop only; and the position stated by H.E. is correct. Under section 15(1), Government can fix the maximum rate of rent payable by tenants for lands. Under sub-section (2), a landlord shall not recover rent from any tenant at a rate exceeding the rate so fixed. This however does not touch upon the relation of the rent to the total produce of all crops or only the produce of the principal crop as may have been payable according to the agreement, usage or custom. This portion will, therefore, have to be corrected accordingly.

Sd/- D V.Vyas.

Remembrancer of Legal Affairs.

Co. H.V.V./15.5. U.O. to R.D. No.712 dated the 20th January 1947.

Office of the R.T.A.

In place of the draft notification at/p.19, a revised draft thereof is sent herewith.

Sd/- P.N.Lal.
24.4
Remembrancer of Legal Affairs.

U.O. to R.D. No.4168, dated the 24th April 1947.

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Notification.

Revenue Department,

Bombay Castle, 1947.

Bombay Tenancy Act, 1939.

No. 3451/45.- The following draft of a notification which it is proposed to issue under section 27 of the Bombay Tenancy Act, 1939 (Bom.XXIX of 1939), is published as required by sub-section (3) of the said section 27, for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration by the Government of Bombay on or after * 1947.

*To be filled in.

2.Any objection or suggestion which may be received by the Secretary to the Government of Bombay in the Revenue Department from any person with respect to the said draft on or before the date aforesaid will be considered by Government:-

Draft Notification.

No. 3451/45.- In exercise of the powers conferred by section 27 of the Bombay Tenancy Act, 1939(Bom.XXIX of 1939), the Government of Bombay is pleased to amend the Bombay Tenancy Rules, 1947, as follows, namely:-

In rule 7 of the said rules, for the portion beginning with the words "to the landlord", the following shall be substituted, namely:- made by a landlord & ending

"made by ——

(i) a landlord towards the cultivation of tenant's holding , such as protection of crop, grant of seeds of manure; and

(ii) a tenant towards maintenance of or repairs to lands for purposes of determining the reasonable rent as payable by a tenant to the landlord."

By order of the Governor of Bombay,

Secretary to Government.

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H.V.V.
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Office of the R.L.A.

Amendment 1 - In view of the provisions of section 6 of Bombay Act 10 of 1945, no amendment is necessary, in the sections pointed out by Mr.Bodas.

Amendment 2 - The view taken by Mr. Bodas is not correct. I do not understand what he means by suggesting that in view of sub-section (1A) of section 24 the words mentioned by him in sections 20 and 21 should be deleted. The position is that sections 20 and 21 precede section 24. Section 20 gives relief against termination of a tenancy for non-payment of rent. It provides that if the landlord sues a tenant for ejectment in a Court, the Court shall instead of making a decree or order etc. ask the tenant to tender to the landlord the rent or to give security for making such payment etc. Section 21 gives relief against termination of a tenancy in certian other cases, namely, where the tenant has done any act which is destructive or permanently injurious to the land. This section provides that no suit for ejectment shall lie unless and until the landlord has served on the tenant a notice in writing specifying the act complained of and the tenant fails within a period of one year to restore the land to its original condition. I do not see what incongruity Mr. Bodas finds in sections 20 and 21 on the one hand and section 24 (1A) on the other. Even if a landlord were to get a decree or order under section 20 for failure of a tenant to make the payment or to give security or under section 21 after complying with the requirement of that section, namely, giving the tenant a written written notice ect., sub-section (1A) of section 24 expressly provides that no landlord shall obtain possession of any land held by a tenant except under an order of the Mamlatdar. In addition therefore to the decree or order of a Court under sections 20 and 21, the landlord must approach the Mamlatdar under this provision and secure his order for obtaining possession of the land.

Amendment 3 - It will be noticed that section 10 originally merely provided that sub-division of a land held

by a protected tenant shall not be ~~among~~ recognized or binding on the landlord unless the written consent of the landlord had been previously obtained. This section has now been substituted by a new section which provides that no subdivision whatever by a protected tenant, i.e. whether with or without the consent of the landlord, shall be recognised and if he makes such sub-division his ~~max~~ tenancy shall be liable to termination. It followed that this was one of the cases in addition to those mentioned in sub-section (2) of section 5 in which a tenancy could be terminated and as a result the consequential amendment was made in that sub-section by addition of new clause (cc) namely, a tenant has subdivided the land. The words are not therefore redundant.

Amendment 4 - An amendment of rule 3 of the Bombay Tenancy Rules is indicated.

Sd/- D.V. Vyas,

Remembrancer of Legal Affairs.

U.R. to R.D.No. 8038, dated the 6th August 1947.

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Office of the R.L.A.

H.E. H.D., desires that the benefit of the special remission sanctioned in R.D. C.R. No.5547/45, dated 8-8-1947, should be passed on to the tenant who is the actual cultivator. Presumably what is intended to be passed on is the actual sum of land revenue as remitted; and it is presumed that it is not the intention that a tenant should get a reduction in his rent proportionate to the remission given to the landlord in the land revenue The remission is of a special nature; and the usual principle that when remission is given by reason of failure of crops the tenant is entitled to a proportionate, as distinguished from an equivalent, reduction in rent would not be applicable to this remission. To hold otherwise would be compelling the landlord to make a bounty in favour of his tenant which would be inequitous, and would not have been legally feasible, but for the provisions of section 16 of the Bombay Tenancy Act, 1939. Sub-section (1) of that section provides:

> "Notwithstanding anything contained in section 84 A of the Bombay Land Revenue Code, 1879, whenever from any cause the payment by a landlord in respect of any land is suspended or remitted, the landlord shall suspend or remit, as the case may be, the payment to him of the rent of such land by his tenant. If in the case of such land the land revenue is partially suspended or remitted, the landlord shall suspend or remit the rent payable by the tenant of such sir land in the same proportion:
>
> " Provided that the landlord shall not be bound to suspend or remit the rent or portion thereof which is payable in the form of a share of the crop."

of the whole land revenue, payable to Govt

The section did not contemplate an extra-ordinary remission of the kind now under consideration. In ordinary circumstances the provision of the section were quite equitable, because remissions are ~~xx~~ generally ~~xxxx~~ given for failure of crops; and as explained above, the tenant would then be entitled to get a proportionate remission in rent, and in the case of crop shares, such remission ~~automatically~~ would automatically be given,

since a landlord's share in a bad year would be correspondingly very much less in quantity. The letter of the law as contained in section 16 which uses the words "whenever from any cause the land revenue is remitted" would entitled the tenant to claim a proportionate reduction in his rent. Section 16, therefore, presents an insuperable difficulty in the way of providing that a benefit equivalent to the exact sum of remission given in the land revenue should only be passed on to the tenant.

If, however, the intention be to give the tenant a reduction in rent proportionate to the remission in the land revenue, then the only case which we need consider is that of tenants paying crop shares to whom section 16 is in terms made inapplicable by the proviso thereto. In their case the result of giving proportionate benefit in rent can be achieved, as suggested by H.M., R.D., by reducing the rent specially in that proportion under section 15. Section 15 provides that the Provincial Government may from time to time by notification in the Official Gazette fix the maximum rate of rent payable by tenants for lands situated in such areas as may be specified in the notification. In exercise of the powers conferred by this section, notification No.1140/45-F was issued fixing the maximum rent as follows: one-fourth in the case of irrigated land and one-third in the case of other lands of the crop or its value or the rate of rent agreed upon between the tenant and his landlord whichever is less. The notification applies to lands situate in the areas in which section 15 is in force; and it has been unofficially ascertained that the section has been extended to the whole of the Province except the City of Bombay. Consequently the limit laid down in the notification applies to the whole of the Province except

the City of Bombay. It would be feasible to issue a notification under section 19 providing that the maximum rent for any particular year shall be the crop share or its value less the sum (or its equivalent income) representing the reduction in land revenue granted by Government.

Sd/-P.M.LAD
20/11/47

Remembrancer of Legal Affairs.

U.R. to R.D. No.11110 dated the 21st November 1947.

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